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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re J.J., a Person Coming Under the
Juvenile Court Law.**

THE PEOPLE,

Plaintiff and Respondent,

v.

KIM W.,

Defendant and Appellant.

A123332

**(Contra Costa County
Super. Ct. No. J0501778)**

Kim W. appeals contending the trial court erred when it denied her request to transfer the dependency proceedings concerning her son J.J. from Contra Costa County to Alameda County. We conclude the court did not abuse its discretion and will affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

We have addressed several aspects of this case before. We will quote liberally from our most recent opinion.

“Five-year-old J.J. is the sixth of seven children born to mother, who has a long history of drug abuse and criminal activity. J.J.’s five older half-brothers, ranging in age from 10 to 28 years old, were all removed from mother’s custody due to neglect or abuse.

“In September 2005, when J.J. was less than two years old, mother frequently left him with a neighbor while she sold drugs out of her apartment. J.J. was taken into

protective custody after mother was arrested on September 29, 2005 for possession of crack cocaine. Mother, who was seven months pregnant, promptly began residential treatment at the Magnolia Women's Recovery Program. On February 17, 2006, she gave birth to her seventh son, D.R., who has remained in her custody.

"J.J. was declared a dependent child in November 2005 after the court sustained a petition filed by real party in interest Contra Costa Bureau of Children and Family Services (Bureau) under [Welfare and Institutions Code¹] section 300, subdivision (b). At the disposition hearing held in February 2006, J.J. was removed from mother's custody and placed in foster care. Mother was given reunification services, which were extended for a full 18 months. Among the requirements of her case plan were visitation, the successful completion of an inpatient substance abuse treatment program, sobriety, and the avoidance of illegal activities.

"Mother completed the residential treatment program but had some relapses in late 2006 and 2007. In July 2007, at the 18-month review hearing, the court terminated reunification services and set the case for a permanency planning hearing under section 366.26. Mother filed a petition seeking additional services under section 388. At the combined section 366.26/388 hearing held on October 26, 2007, the court vacated the section 366.26 hearing and ordered additional services.

"J.J. remained in a foster home where he had been placed in April 2007. He suffered from some developmental and emotional delays, sometimes manifesting in aggressive or impulsive behavior, but these issues had improved with therapy and the loving, consistent care of his foster mother. Visits between J.J. and mother were going well.

¹ Unless otherwise indicated, all further section references will be to the Welfare and Institutions Code.

“In a report prepared for a status review hearing originally set in February 2008, Bureau social worker Kimberly Shaw recommended setting the case for another section 366.26 hearing, noting in her report, ‘During this review period, the mother has complied with the services ordered by the Court. Her drug tests have been negative, and she has provided evidence of continued participation in her CAADAC internship at the Magnolia substance abuse treatment program. Other issues have emerged, however, regarding multiple incidents requiring police intervention, between the mother and [D.R.], Sr., the father of her two-year-old child. In addition, [mother] has contradicted herself multiple times regarding issues relevant to this case.’

“In May 2008, the court authorized J.J. to have overnight visits with mother. On August 19, 2008, the court authorized a 30-day visit with mother.” (*Kim W. v. Superior Court* (May 4, 2009, A124209, pp. 2-3) [nonpub. opn.] (*Kim W.*.) On September 23, 2008, noting the significant progress mother had made, the court ordered J.J. returned to mother’s custody with reunification services. At the hearing, mother’s counsel asked that the dependency case be transferred from Contra Costa County to Alameda County, where mother lived. The court denied the request.

“On October 2, 2008, mother was returning home from a therapy appointment with J.J. and his little brother D.R. J.J. threw a tantrum and began undressing in the middle of the street. Mother responded by taking him into the El Cerrito BART station bathroom and spanking him with a belt. The BART police were called, and mother admitted to the investigating officer that she had spanked J.J. with a belt with his pants on. The officer concluded the belt used would not have hurt the child more than a hand would, and mother was released.

“On October 7, 2008, mother called social worker Shaw and told her J.J. had acted out during a therapy session and that he was throwing temper tantrums at bedtime. She did not report ever striking him. Mother talked to the therapist about J.J.’s tantrum, but said she had not spanked him and would never hit her kids.

“On October 29, 2008, social worker Shaw received a telephone call from a person who reported that mother had beaten J.J. in a BART station bathroom after he acted out during a therapy appointment. The reporter claimed that three weeks earlier mother had hit both J.J. and D.R. with her hands and called them names. Shortly after this call, Shaw received a call from mother saying that a man she had dated a couple of times was angry with her and had left a message telling her she was going to lose her kids. On October 31, 2008, Shaw and social worker Tracy Kenney went to J.J.’s school and interviewed him about the BART station incident. Asked whether mother had taken him into the bathroom there, J.J. said, ‘She didn’t hit me or slap me or hit me with a belt. She just put water on my face.’

“Social worker Kenney interviewed mother on November 5, 2008. Mother explained that she had spanked J.J. with her hand when he sat down in the street after therapy and would not get up. She told Kenney she took J.J. into the BART station bathroom to wash his face but did not strike him.

“During the investigation of the BART incident, social worker Shaw discovered that almost a year earlier, on December 24, 2007, mother had passed a counterfeit traveler’s check at a Marshall’s store. Mother was voluntarily interviewed by police in January 2008 and claimed to have purchased a book of ten \$100 traveler’s checks for \$300 from a man on the street. The district attorney in Alameda County had filed felony charges of forgery and burglary, and the case was scheduled for a preliminary hearing on December 12, 2008. The deputy district attorney assigned to the case believed that mother would serve up to one year in jail for the offense.

“Additionally, on October 8, 2008, police responded to a call at mother’s home after a physical altercation between mother and her adult son Gregory H. During the argument, Gregory had thrown a cell phone that hit J.J.’s younger brother D.R. in the head. Gregory told police he wanted to ‘end it all’ and throw himself under a train, and he was taken into custody and placed on a 72-hour hold to evaluate his mental health.

Mother had previously advised social worker Shaw that Gregory was not living in her home, although she would allow him to move in when J.J.'s dependency case was dismissed. The police report of the October 8 incident indicates that Gregory's address was the same as mother's.

"Based on these events, Bureau filed a supplemental petition under section 387. It alleged a more restrictive placement was required because: (1) mother had hit J.J. with a belt in the El Cerrito BART station restroom; (2) mother had misled the court about her criminal rehabilitation by failing to disclose to the court or her social worker that she had passed forged or counterfeit traveler's checks, for which she had been arraigned for forgery and commercial burglary; (3) mother had fought with her older son, Gregory, who threw a telephone and struck J.J.'s younger half-brother D.R. in the head; and (4) J.J. had reported that mother hit D.R. with a belt, slapped him with a shoe and hit him with her hand." (*Kim W., supra*, A124209.)

On November 21, 2008, mother filed a notice of appeal from the court's September 23, 2008 decision denying her request to transfer jurisdiction from Alameda County to Contra Costa County.

Subsequently, on December 22, 2008, the trial court sustained the first three allegations in the section 387 petition. "It found by clear and convincing evidence that reasonable efforts had been made to eliminate the need for J.J.'s removal, but that J.J.'s physical and emotional well-being required that he not be returned to mother's custody. Noting that mother had received at least 36 months of services, the court terminated family maintenance services, declined to order reunification services, and set the case for a permanency planning hearing under section 366.26. Mother filed a petition for extraordinary relief." (*Kim W., supra*, A124209.) This court denied the petition in an opinion dated May, 4, 2009.

II. DISCUSSION

Mother contends the trial court erred when it denied her request to transfer the dependency proceedings from Contra Costa County to Alameda County. To put this argument in context, further background is necessary.

At the September 23, 2008 hearing, mother's counsel asked that the case be transferred to Alameda County where mother lived. Counsel stated that if the case were transferred, mother would have priority for low income housing, she would become eligible for child care assistance, and she could obtain therapy for herself and for J.J. closer to her home in Newark rather than having to travel to Richmond twice a week. The transportation issue was important because mother's car had broken down and she was required to travel by bus and BART.

The request was supported by a therapist, Richele Howell, who was counseling mother and J.J. She said it would be "helpful for the family if services could be provided closer to her home."

J.J.'s counsel had "mixed emotions" about the request. She believed a transfer would make sense because services could then be provided locally. Counsel did not like J.J. having to travel to Richmond twice a week for therapy. Counsel also noted J.J.'s personal therapist, Diana Smith, had been on medical leave and that he had not seen her for about a month. However questions from the court clarified that Smith's medical leave was nearly over and that she would be returning soon.

Counsel for the Bureau said he was "agreeable" to the transfer, and that the Bureau could make the necessary referrals so that mother and J.J. could receive therapy in Alameda County.

The court complimented mother, J.J.'s attorney, and the social worker for the progress that had been made. However the court denied the request to transfer stating it "want[ed] more time to watch this." The court explained: "[A]s smart as Mom is, I do find Mother to be probably one of the more manipulative people I've had in my court

[for] a long period of time. Doesn't mean I don't like her because I do. But I want to make sure that whoever handles this case does understand it really well. So I'm keeping it here. [¶] . . . I do not want the child moving therapists at this time. This is the first time we've had a really solid family maintenance situation. The child is now going to be going to daycare, the younger child I assume will be going to daycare. There's going to be lots of changes in this child's life. I do want that same therapist, and I'm assured that the therapist is coming back. . . . [¶] . . . [¶] . . . The therapist is in Richmond which is a BART ride. It's not so far. And I do want to keep those therapists in place for a period of time. [¶] I want a continuity of observations of the child in the home for a period of time. I think what we can do is set this for four months. Let's look give a four-month family maintenance, and let's review it at that time. And then maybe at that time we can transfer it. The court will have more information."

Mother now contends the court erred when it denied her request to transfer.

A juvenile court may transfer a dependency case from one jurisdiction to another in which a parent resides. (§ 375; *In re J. C.* (2002) 104 Cal.App.4th 984, 992.) The transfer must be in the best interests of the child. (*In re J. C.*, *supra*, 104 Cal.App.4th at pp. 992-993.) On appeal, we review the trial court's decision for an abuse of discretion. We must uphold the order unless it exceeds the bounds of reason, and we cannot substitute our judgment for that of the juvenile court. (*Ibid.*)

Here, as the court explained, several factors weighed against a transfer. First, the authorities in Contra Costa County had been supervising mother's case for many years and they were intimately familiar with mother, with J.J., and with their situation. Transferring the case to a different jurisdiction where it would be supervised by persons who would not have that depth of knowledge could be problematic.² Indeed, given what

² Mother concedes "it would undoubtedly take time for the Alameda Court to get up to speed in the case"

the court described as mother's extraordinarily "manipulative" tendencies, such a change might even be considered dangerous.

Second, mother's rights concerning J.J. had nearly been terminated only a year earlier, and she only recently had made enough progress that J.J. was allowed to live with her for a 30-day period. The court reasonably could conclude that it would not be in J.J.'s best interests to transfer the case to a different jurisdiction at such a critical juncture.

Third as the court noted, J.J. was about to undergo many significant changes in his life and the proposed transfer would necessitate yet another significant change: new therapists. The court reasonably could conclude that forcing the then four-year-old J.J. to forge new relationships with new therapists at the same time he was undergoing so many other significant changes would not be in his best interest.

We conclude the court did not abuse its discretion when it rejected mother's request for a transfer.

Mother argues the court did abuse its discretion. She notes that the transfer would have made her eligible for low-income housing and child care assistance, and it would have eliminated the need for her and J.J. to travel to Richmond in order to obtain therapy. She also argues that Alameda County authorities "[p]resumably" would be better able to supervise her case since she lived there.

While some of the factors mother cites are significant and would have supported the court's ruling *if* it had decided to transfer the case, that is not how the court ruled. The court decided to *not* transfer the case and that decision is amply supported. The juvenile court's broad discretion to determine what best serves a child's interests will not be reversed absent a clear abuse of discretion. (*In re J. C.*, *supra*, 104 Cal.App.4th at p. 993.) The court here did not abuse its discretion even though a different conclusion might also have been reasonable. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 319.)

III. DISPOSITION

The order is affirmed.

Jones, P.J.

We concur:

Simons, J.

Needham, J.